

Docket No. UT-970342 On October 9, 1997, Pend Oreille Telephone Company (Pend Oreille) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Pend Oreille included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970343 On October 15, 1997, Tenino Telephone Company (Tenino) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Tenino included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970344 On October 15, 1997, Kalama Telephone Company (Kalama) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Kalama included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970345 On October 15, 1997, United States Cellular Corporation (U.S. Cellular) filed a Petition seeking designation for the following exchanges: Centralia; Chehalis; Winlock; Castlerock; Longview-Kelso; Woodland; Yakima; George; and Quincy. U.S. Cellular included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c). The petition also requested additional time to complete the network upgrades pursuant to 47 C.F.R. §54.101(c) in order to comply with the E911 requirements of 47 C.F.R. §54.101(a)(5).

Docket No. UT-970346 On October 17, 1997, Pioneer Telephone Company (Pioneer) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Pioneer included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970347 On October 17, 1997, Hat Island Telephone Company (Hat Island) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Hat Island included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970348 On October 17, 1997, GTE Northwest, Incorporated (GTE) filed a Petition seeking designation for its study area consisting of the exchanges served on December

10, 1997, as indicated by its tariffs. GTE included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970349 On October 30, 1997, United Telephone Company of the Northwest (SPRINT/United) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. United included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970350 On October 22, 1997, Western Wahkiakum County Telephone Company (Wahkiakum) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Wahkiakum included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970351 On October 23, 1997, Inland Telephone Company (Inland) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Inland included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970352 On October 24, 1997, St. John Co-operative Telephone and Telegraph Company (St. John) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. St. John included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970353 On October 24, 1997, Whidbey Telephone Company (Whidbey) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Whidbey included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970354 On October 24, 1997, U S WEST Communications, Inc. (USWC) filed a Petition seeking designation for the Seattle, Tacoma, Bellevue, Des Moines, Federal Way, Renton, Olympia, Spokane, Yakima and Vancouver exchanges. USWC included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970356 On October 24, 1997, Cowiche Telephone Company Inc. (Cowiche) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Cowiche included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Because of the common issues included in these petitions, we have consolidated them for purposes of this order.

III. STATUTORY BACKGROUND AND JURISDICTION

Section 214(e) of the 1996 Act sets forth the standards and processes for a state commission designation of an ETC.

(1) ELIGIBLE TELECOMMUNICATIONS CARRIERS.--A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received--

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

(2) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS.--A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

(3) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS FOR UNSERVED AREAS.--If no common carrier will provide the services that are supported by Federal universal service support mechanisms under section 254© to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services, or a State commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting

unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof. Any carrier or carriers ordered to provide such service under this paragraph shall meet the requirements of paragraph (1) and shall be designated as an eligible telecommunications carrier for that community or portion thereof.

(4) RELINQUISHMENT OF UNIVERSAL SERVICE.--A State commission shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the State commission of such relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the State commission shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The State commission shall establish a time, not to exceed one year after the State commission approves such relinquishment under this paragraph, within which such purchase or construction shall be completed.

(5) SERVICE AREA DEFINED.--The term "service area" means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

This section in effect states two general criteria for approval of an ETC: (1) the carrier must offer the "services" that are supported by the federal fund and (2) the carrier must advertise the availability of those services. The carrier must do these "throughout the service area for which the designation is received." 47 U.S.C. §214(e)(1). The definition and scope of the "service area" are the main points of contention in these proceedings.

The Commission has jurisdiction over this petition both because of the 1996 Act and because of those provisions of state law which give the Commission authority over the rates and practices of telecommunications companies and its power to define the scope and nature of a carrier's service obligation. See RCW 80.01.040(3); 80.36.080; 80.36.090; 80.36.140; 80.36.230.

The Commission in these proceedings must determine whether each Petitioner meets the prerequisites for designation as an ETC and also whether the Commission may and

should define as a "service area" some geographic area other than what is currently in the carrier's "study area."²

IV. PROCEEDINGS BEFORE THE COMMISSION

The Commission Staff (Staff) coordinated the process of the Petitions and undertook an evaluation of the law and the facts applicable to each. These were presented to the Commission at its open public meeting on November 26, 1997. At that meeting, the Commission also heard testimony from the following: Richard Finnigan (representing Yelm, Toledo, McDaniel, Mashell, Lewis River, Hood Canal, Ellensburg, Pend Orielle and Asotin telephone companies and the Washington Independent Telephone Association); Rob Snyder (representing Tenino, Kalama, Pioneer, Hat Island, Western Wahkiakum, Inland, St. John, and Whidbey telephone companies); Simon ffitich (representing Public Counsel); Joan Gage (representing GTE Northwest); Theresa Jensen (representing USWC); and Judy Endejan (representing U.S. Cellular).

At the November 26, 1997 meeting, the Commission continued its consideration of the Petitions until the regulatory scheduled December 10, 1997, meeting. At that time, the Commission heard testimony again from Staff as well as from the following: Richard Finnigan (representing Yelm, Toledo, McDaniel, Mashell, Lewis River, Hood Canal, Ellensburg, Pend Orielle and Asotin telephone companies and the Washington Independent Telephone Association (WITA)); Rob Snyder (representing Tenino, Kalama, Pioneer, Hat Island, Western Wahkiakum, Inland, St. John, and Whidbey telephone companies); Mr. Glen Harris (representing SPRINT/United); and Joan Gage (representing GTE Northwest).

In addition, the Commission received written material submitted by Commission staff and the Washington Independent Telephone Association.

V. POSITIONS OF THE PARTIES

A. Commission Staff

Staff recommended that the petitions be granted as modified by the staff's written recommendation with supporting material. Staff recommended the Commission make all service area designations at the exchange level. The designations for GTE, USWC, and U.S. Cellular were to be effective January 1, 1998, and the same effective date for all single exchange rural telephone companies. Staff recommended that Telephone Utilities and SPRINT/United be

² A "study area" is generally an incumbent LEC's pre-existing service area in a given state. The study area boundaries are fixed as of November 15, 1984. Universal Service Order ¶ 172, n.434 citing. MTS and WATS Market Structure: Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Decision and Order, 50 Fed. Reg. 939 (1985).

designated at the study area level from January 1, 1998, through March 31, 1998, and thereafter designated at the exchange level. Staff's recommendation for small multi-exchange rural telephone companies was study area designation from January 1, 1998, through June 30, 1998, and thereafter at the exchange level.

The purpose for the proposed delayed effective dates for exchange level designation was to permit the Federal Communications Commission (FCC) sufficient time to consider this Commission's petition to the FCC for agreement with the deviation from study area designations. See 47 U.S.C. § 214(e)(5); Universal Service Order ¶¶ 186-88.

Staff also recommended a section in the order requiring each ETC to meet service quality standards as a condition of becoming an ETC.

Whidbey presented a unique case. In 1995, the Commission permitted Whidbey to serve a number of customers in an area they termed a Supplemental Service Area (SSA). This area is in the Coupeville exchange which is served by GTE. Whidbey has never received high-cost support for the approximately 600 customers in this area. Staff recommended that the SSA not be included in the service area designation for Whidbey.

The staff recommendation was modified for the December 10 open meeting. The recommendations on service area designations remained the same for all companies except Telephone Utilities and SPRINT/United. Their various groups of contiguous exchanges were to be designated service areas January 1, 1998, and then the exchange-level designation effective date was to be pushed back to July 1, 1998, with the other multi-exchange rural companies. The proposal for a separate section on service quality standards for qualification as an ETC was dropped as the Staff suggested because service of adequate quality is inherent in the Act's requirement that an ETC provide "service."

B. Rural Local Exchange Companies

Rural local exchange companies of all sizes, with and without non-contiguous exchanges, were opposed to any designation other than at the study area level. This opposition was based on the FCC plan to permit competitors to receive universal service funds based on study area average costs. In the November 26 meeting they suggested study area level designations followed by a series of workshops to see how effectively staff and the companies could devise a method of disaggregating study area cost data to the exchange level. Upon successful completion of this task, they proposed a joint petition to the FCC which, if successful, would result in their support for exchange level designations. They maintained this position at the December 10 meeting.

Counsel for WITA argued that initial designation at the study area was legally mandated unless the Commission conducted a formal adjudicatory proceeding under the state Administrative procedure Act (APA), chapter 34.05 RCW. WITA contended that designation

was "licensing" under the APA, and, before any license could be modified, a formal hearing must be held.

C. USWC

USWC did not present any testimony. Its petition was for ten exchanges only, all of which are in urban or small city locations.³

D. GTE

GTE supported designation of all their exchanges individually at the exchange level beginning January 1, 1998.

E. U.S. Cellular

U.S. Cellular asked for designation in ten non-rural exchanges. Seven are presently served by USWC, and three are served by GTE. Although non-rural under the 1996 Act, much of the area covered by these ten exchanges is quite rural in fact. U.S. Cellular also asked that the Commission not attempt to assert jurisdiction over the company beyond the designation of it as an ETC. U.S. Cellular represented in its petition that it would participate in Lifeline and Link-up if designated.

F. Public Counsel

Public counsel recommended that, in addition to retaining the authority to suspend or revoke designation, the Commission state it has authority to modify the designations.

G. Whidbey Telephone Company

Whidbey Telephone Company opposed the staff recommendation that the Supplemental Service Area created in 1995 be excluded from its service area designation as an ETC.

³ USWC stated it would continue to participate in the Washington Telephone Assistance, Lifeline, Link-up Programs and offer the discounts in 1998 to customers USWC serves in all exchanges regardless of ETC status. USWC understands it will not receive reimbursement from federal sources for discounts given to customers in areas for which USWC is not an ETC.

VI. DISCUSSION

A. Need for a Hearing

The Commission concludes that there is no need for an "adjudicative proceeding" under the state Administrative Procedure Act as a prerequisite to designation of a carrier for a geographic area other than the carrier's study area. Indeed, given the time line within which Congress and the carriers have asked state commissions to act, protracted adjudicative proceedings seem counter to the interests of those suggesting the need for a hearing.

We do not accept that this is a "licensing" proceeding under the APA. However, we need not decide that because even if this is a licensing proceeding, this is not a proceeding to modify a license as counsel for a number of the small rural companies contends. While a hearing may be required to modify a license, it is not required for an initial license. Even if ETC designation constitutes the granting of a license, it is an initial license and therefore not covered by our APA.

B. Designation for Areas Other than a Petitioner's Study Area

Section 214(e)(5) of the Act governs the determination of the geographic area in which the ETC will serve:

The term "service area" means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

As stated, "a service area means a geographic area established by the Commission." For non-rural companies, the authority to determine the geographic area of service areas is without limitation. In the case of an area served by a rural carrier, however, 214(e)(5) defines the service area as the carrier's "study area" unless the Commission and the FCC⁴ establish a different definition of service area. In establishing a service area different than

⁴ The FCC has established a procedure for reviewing state orders which make designations of areas other than the study area as the service area. Its procedure anticipates that initial action will be taken by the states; designations are deemed approved if the FCC does not act within 90 days of noticing the receipt of the state order. See 47 C.F.R. §54.207.

the study area, the Commission must "take into account" the recommendations of the Federal-State Joint Board.⁵

The language "take into account" connotes not that we are bound to accept the study area, but only that we consider the Joint Board recommendations. We have done so.⁶ We also have considered the FCC discussion of this issue in its Universal Service Order.⁷

The FCC also noted the "states should exercise this authority [to designate service areas] in a manner that promotes the pro-competitive goals of the 1996 Act" Universal Service Order ¶184.⁸ As recommended by Staff, the pro-competitive goals of the Act favor designation of smaller, rather than larger, service areas. The caution by the FCC and the Joint Board that areas not be "unreasonably large," Universal Service Order ¶184, supports this conclusion.

However, we understand the concerns of the rural carriers about immediate designation at the exchange level. Therefore, we concur with the proposal that the Commission initiate on an expeditious basis a series of workshops in order to fully develop the issues and, if possible, a consensus proposal for disaggregation of study area costs to exchange-level costs. Based on representations by counsel for a number of the rural companies, we are optimistic that these workshops will produce a consensus approach consistent with the competitive goals of the Act. We will order that the service areas for the rural carriers be the carriers' study areas through December 31, 1998. On January 1, 1999, the service areas shall be at the exchange level. Should the FCC fail to accept a proposal coming out of the workshops, we may reconsider this portion of the order.

⁵ Recommended Decision, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (November 8, 1996)

⁶ We concur with the analysis of staff in its memorandum presented at the November 26, 1997, open meeting. This Commission may deviate from study area designations and ask the FCC to concur.

⁷ First Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997).

⁸ We recognize that the cited paragraph of the Universal Service Order is in the context of non-rural service areas. However, the principle that this ETC and service area designation process should promote the pro-competitive policies of the Act should apply also to the designation of rural service areas, recognizing of course that such designation is subject to FCC process and review.

C. Designation of Whidbey

Whidbey poses some unique issues. In Docket No. UT-95-0030, Whidbey was authorized to provide service in the so-called Supplemental Service Area (SSA) outside of its historical South Whidbey Exchange and within the Coupeville Exchange served by GTE. While that did in one sense expand the area which Whidbey serves, it had no impact in redrawing exchange lines, nor did it change Whidbey's "study area." See Universal Service Order ¶182, n.467; ¶172, n.434 ("study area boundaries are fixed as of November 15, 1984").

While the Commission has authority to designate an area other than a study area and other than an exchange area, we see no compelling reason to grant Whidbey's request to be designated as an ETC for the SSA. The present policy is to designate all ETCs at the exchange level so that the obligation to serve is equal where there is, or may be, competition. At the same time, the amount of universal service support would also be the same per customer for each ETC in a given exchange. Whidbey may request ETC designation in the Coupeville exchange, where it already has customers, and be a full competitor of GTE. Another option open to Whidbey is to request the Commission to create a new exchange or service area equal to the SSA and designate it (and, presumably, GTE) as an ETC in that area.

D. Jurisdiction Over Cellular Companies

The FCC has concluded wireless carriers are eligible to be designated as ETCs provided they have the ability to serve all potential customers in a service area, which they may accomplish through combining their services with land line services of another carrier.⁹ Though state law limits the Commission's power to regulate wireless carriers, RCW 80.36.370(6), U.S. Cellular nevertheless filed a petition with the Commission seeking designation, conceding the Commission's jurisdiction for that purpose, citing section 214(e)(2) of the Act and RCW 80.01.040(3) as the basis for its Petition. No other party has contested the Commission's jurisdiction, and we conclude that we have such jurisdiction for the purpose of ETC designation and related issues. The Commission does not assert jurisdiction over U.S. Cellular beyond that necessary to designate it as an ETC under 47 U.S.C. § 214(e) and to enforce, modify, suspend, or revoke this order with respect to U.S. Cellular.

E. Waiver for Requirement of Providing Toll Control

All Petitioners have requested a waiver for provision of toll limitation as a prerequisite for obtaining ETC designation. The Petitioners have demonstrated in their Petitions and at the hearings that exceptional circumstances exist which warrant the granting of a waiver for providing toll limitation as authorized by 47 C.F.R. §54.101(c).

⁹ Universal Service Order ¶¶ 141, 145.

F. Waiver of E911 Service for U.S. Cellular

U.S. Cellular's request for waiver of E911 as authorized by 47 C.F.R. §54.101(c) also is justified by exceptional circumstances as outlined in U.S. Cellular's Petition.

G. Service Quality Issues

Staff originally urged the Commission to include as part of the condition of granting ETC status a requirement that the carriers, including U.S. Cellular, abide by Commission service quality standards set forth in WAC 480-120. A number of carriers contested the Commission's authority to so condition the designation. We need not reach that issue of legal authority as we conclude that the carriers' obligation to "offer the services that are supported by Federal universal service support mechanisms," as required by 47 U.S.C. §214(e)(A), connotes not just willingness to offer the services, but actual performance of the services. Such performance in turn connotes performance of the services at an adequate service level. As set forth below, whether an ETC-designated carrier is actually performing such service could arise in a proceeding to modify, revoke, or suspend the designation.

Requiring adequate service also is consistent with the pro-competitive policies of the 1996 Act. No company should be able to obtain a competitive advantage by avoiding its service quality responsibilities. The Commission expects that all companies receiving ETC status will comply with relevant Commission rules.

H. Modification, Revocation, or Suspension

Given the changing dynamics of the market in the local exchange, the Commission may from time to time reopen these proceedings in order to modify the geographic area for which the companies are designated. Such a proceeding may be commenced by the designated company, a petitioner for ETC status, by the Commission on its own motion, or by another appropriate person or entity.

In addition to such geographic area modifications, the Commission has the authority to modify, revoke, or suspend the designations should the prerequisites to the original designation cease to exist.¹⁰ For example, should the company no longer advertise its services

¹⁰ Though the federal Act does not specify the means for revocation or modification of an ETC designation, the Commission has authority under state law to reopen any matter before it. RCW 80.04.210. Further, the federal Act contemplates such as it allows a state commission to designate ETCs on its own motion. 47 U.S.C. §214(e)(1)(2). There is nothing in that provision which limits a state commission on its own motion from redesignating a company already designated and in effect modifying the prior designation.

throughout the designated area as required by 47 U.S.C. §214(e)(B), the Commission may revoke the designation or suspend it until the deficiency is corrected. Likewise, should the company cease to "offer the services that are supported by Federal universal service support mechanisms" as required by 47 U.S.C. §214(e)(A), the Commission may revoke or suspend the original designation. In making the determination of whether a designated company continues to offer such services, the Commission will look not just to the advertised availability of the services, but to the actual and timely delivery of those services. In determining whether a designated carrier is providing such service the Commission will be guided by currently accepted industry standards, including, but limited to, the quality of service rules contained in chapter 480-120 WAC.¹¹

The Commission may modify this order for other reasons permitted by the Act.

VII. FINDINGS OF FACT

From the above, the Commission enters the following summary findings of fact:

1. The Petitioners are telecommunications companies doing business in the state of Washington.
2. The wireline petitioners other than Whidbey currently serve the exchanges set forth on their exchange area maps on file with the Commission as of December 10, 1997. The sum of those exchanges constitute the study areas for the respective companies.
3. Petitioner U.S. Cellular currently serves in various exchanges, including the Centralia; Chehalis; Winlock; Castlerock; Longview-Kelso; Woodland; Yakima; George; and Quincy exchanges for which it filed as an ETC
4. Whidbey currently serves the South Whidbey and the Point Roberts Exchanges. Whidbey also serves the "Supplemental Service Area"¹² (SSA) which is located in the Coupeville Exchange, served by GTE. The study area for South Whidbey does not include its SSA.¹²

¹¹ Obviously, there are some differences between wireless companies and wireline companies that make strict application of set standards to all companies difficult. However, the Commission will insist that all companies provide quality service to all customers within the designated service area for that company.

¹² We recognize that study areas are fixed by the FCC and that Whidbey may petition the FCC to add the SSA to its study area. The finding we make in this order is done without such a petition on file and does not constitute our support or opposition to such a petition; we

5. All Petitioners except US West, GTE, and U.S. Cellular have certified that they qualify as rural telephone companies as defined in 47 U.S.C. §153(47) and 47 C.F.R. §51.5. The Commission finds that such certifications are appropriate.

6. After taking into account and considering fully the recommendations of the Federal-State Joint Board, the Commission finds that the appropriate service areas for the Petitioners are as follows:

(a). For non-rural companies, the appropriate service areas are the individual exchanges for which they petitioned, designated on an individual basis, effective January 1, 1998;

(b). For single-exchange rural companies, the appropriate service areas are their respective single exchanges, effective January 1, 1998;

(c). For multi-exchange rural telephone companies, the appropriate service areas are their study areas through December 31, 1998, and thereafter the appropriate service areas are their exchanges, designated individually as separate service areas. In the event of a waiver from the FCC on disaggregation of costs prior to December 31, 1998, the Commission may modify this determination and move the effective date forward.

7. The Petitioners offer all of the services that are to be supported by the federal universal service support mechanisms set forth in 47 C.F.R. §54.101(a).

8. The Petitioners are providing or will provide soon after January 1, 1998, advertisement of the availability of the services that are to be provided by the federal universal service support services, except as otherwise waived by this Order, and the charges therefor, using media of general distribution as required by 47 U.S.C. §214(e)(1)(B).

9. The Petitioners do not currently have the technical capability of providing toll control as defined in 47 C.F.R. §54.400. Exceptional circumstances exist which justify the granted waiver.

10. U.S. Cellular does not currently have the technical capability of providing E911 services. Exceptional circumstances exist which justify the granted waiver.

11. The petitioners have committed to file tariff revisions to provide toll blocking without charge to low income consumers, if necessary, at an early date.

will comment at the appropriate time and in the appropriate manner in the event Whidbey files such a petition.

VIII. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of these proceedings and all parties to them.
2. Granting the relief requested in the petitions, except as otherwise modified by this Order, is consistent with the public interest, convenience, and necessity and is consistent with applicable state and federal law.
3. All the Petitioners except US West, GTE, and U.S. Cellular are rural telephone companies as defined by 47 U.S.C. §153(47).
4. The Commission need not designate all rural company Petitioners for their study areas in these proceedings. The Commission, after taking into account the recommendations of the Federal-State Joint Board, may designate such companies for geographic areas other than their study areas without conducting an adjudicatory proceeding prior to such designation.
5. The Commission has authority to modify, suspend, or revoke these designations, including the service areas accompanying those designations, at a future date.

ORDER

Based on the foregoing, the Commission orders as follows:

1. The Petitions in Docket Nos. UT-970333 through UT-970354 and Docket No. UT-97056 are consolidated for purposes of this order.
2. The Petitions for designation as Eligible Telecommunications Carriers are granted as described in this Order.
3. The geographic areas for which the designations are made are as follows:
 - (a) For non-rural companies, GTE, U.S. Cellular and USWC, the service areas are the individual exchanges for which they petitioned, designated on an individual basis, effective January 1, 1998;
 - (b) For each single-exchange rural company, (Hat Island, Hood Canal, Kalama, Toledo and St. John), the service area is its single exchange, effective January 1, 1998;
 - (c) For each multi-exchange rural telephone company, (Asotin, Cowiche, Ellensburg, Inland, Lewis River, Mashel, McDaniel, Pend Oreille, Pioneer, SPRINT/United, Telephone Utilities, Tenino, Western Wahkiakum, Whidbey, and Yelm), the service area is each company's study area through December 31, 1998. Thereafter the appropriate service area is each exchange designated individually as a separate service area. In the event of a waiver from

the FCC on disaggregation of costs prior to December 31, 1998, then the Commission may modify this determination and move the effective date forward;

(d) For Whidbey Telephone Company, the service area is as described in (c) above, and it does not include the Supplemental Service Area.

4. The Petitioners requests for waivers of the requirement of providing toll control are granted.

5. U.S. Cellular's request for waiver of the requirements to provide E911 service is granted.

6. The companies, with the exception of GTE, USWC, and U.S. Cellular, have appropriately certified that they are rural telephone companies pursuant to 47 U.S.C. §153(47) and 47 C.F.R. §51.5.

7. The rural telecommunications parties to the proceeding shall participate in workshops on the disaggregation of costs from the study area level to the exchange level. The parties will prepare a methodology for disaggregation which can be presented in a joint petition to the FCC from the Commission and the rural companies, the purpose of which will be to receive a waiver from the FCC on payment of universal service support based on study area average loop costs. The parties and the staff shall make their best effort to complete this process expeditiously. An interim report is due to the Commission not later than March 1, 1998. A final report and material for the petition are due not later than April 30, 1998. These workshops are premised on the representations made by parties that exchange level designations would be acceptable if the FCC were to permit disaggregation of costs. The Secretary, or a staff designee, shall notify the parties through their representatives of time, date, and place of workshops and prepare such reports as this order requires.

DATED at Olympia, Washington, and effective this 23rd day of December, 1997.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



ANNE LEVINSON, Chairwoman



RICHARD HEMSTAD, Commissioner



WILLIAM R. GILLIS, Commissioner

APPENDIX B

November 24, 1997

TO: Commissioners Levinson, Gillis and Hemstad

FROM: Bob Shirley, Regulatory Consultant

RE: Designation of Eligible Telecommunications Carriers

The Commission will be requested to grant petitions for designation of Eligible Telecommunications Carriers (ETCs) at its November 26, 1997 meeting. At this time, staff is certain that differences of opinion among carriers on some of the decisions inherent in the designation of ETCs will persist and that no completely satisfactory compromise exists. Accordingly, where decisions must be made that are not susceptible of compromise, staff recommends that the guiding principle on which decisions are based be the promotion of competition. In the recommendations at the end of this memo staff has relied on promotion of competition as its guide.

LAW

Relevant Sections and FCC Orders

Three subsections of the Telecommunications Act of 1996 guide the designation of ETCs. They are 47 U.S.C. 214(e) and 47 U.S.C. 254(e) and (f). They are in Tabs 1 & 2. Definitions from the Telecommunications Act are in Tab 3.

There is also considerable discussion of designation of ETCs in the Recommended Decision of the Federal-State Joint Board and the Universal Service First Report and Order. Several paragraphs from these documents are reprinted and placed in Tabs 4 & 5.

The Importance of Designation

Only designated carriers are eligible for *federal*¹ universal service funds. The amount of money involved nationally will eventually be counted in billions of dollars annually. One estimation of the difference between the cost of providing rural service and the revenue paid by rural customers is \$8.7 billion dollars.² Those companies which already serve

¹ State universal service programs can differ from the federal program. It is not clear, however, the nature and extent to which they may differ. This issue is addressed in more detail below.

² Weinhaus, Carol, "The Shell Game: Options for Universal Service," Telecommunications Industries Analysis Project, Boston, October 2, 1997, p. 2 and n.6, citing Carol Weinhaus, Sandra Makeeff, et al., "What is the Price of Universal Service? Impact of Deaveraging Nationwide Urban/Rural Rates," Presentation at the July, 1993 National Association of Regulatory Utility Commissioners (NARUC) Meeting, San Francisco, CA,

high-cost customers, and those who wish to compete in areas with high-cost customers, will need ETC designation to deliver service at competitive prices and to recoup uncovered costs from universal service funds.

Definition of an Eligible Telecommunications Carrier (ETC)

An ETC is a common carrier³ that meets the requirements of 47 U.S.C. 214(e)(1)⁴ to offer the services supported by federal universal service support mechanisms (what we refer to as basic services) and to advertise the availability of those services through media of general distribution.⁵ An ETC must be willing to provide basic service to any customer in its service area. The only other attribute of an ETC is that it is associated with a particular geographic service area; state commissions establish service areas.

Required Basic Services

ETCs must offer, at a minimum, the FCC list of basic services to qualify as an ETC and receive federal universal service support.⁶ The FCC has defined basic services to include: 1) Single-party service; 2) Voice grade access to the public switched network; 3) Support for local usage; 4) Dual tone multi frequency signaling (touch-tone); 5) Access to emergency services (911); 6) Access to operator services; 7) Access to Interexchange services; 8) Access to directory assistance; and 9) Toll limitation services.⁷

If a carrier needs additional time to make network upgrades in order to meet the single party service, enhanced 911 or toll limitation requirements, state commissions are authorized to grant petitions which give additional time for these activities.⁸ All the petitions before the Commission request a waiver for toll restriction enhancements. The wireless petitioner has requested a waiver for enhanced 911.

Initial State Designations Required by December 31, 1997

Telecommunications Industries Analysis Project, July 26, 1993, figure 3, page 11.

³ "Common Carrier" is defined at 47 U.S.C. 153(10) and means "any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio..." See Tab 3.

⁴ Hereafter, "47 U.S.C." will not be repeated unless necessary to assure proper reference.

⁵ Whether or not states can order additional requirements, such as meeting state service quality standards, is an issue in dispute. This will be discussed in the policy section of the memo.

⁶ 47 C.F.R. 54.101(b)

⁷ 47 C.F.R. 54.101(a)

⁸ 47 C.F.R. 54.101(c)

Section 254(e) requires designation as an ETC as a prerequisite to receipt of federal universal service support. The FCC has announced it will make distributions of federal universal support in 1998 only to designated ETCs.⁹ States are required by 214(e)(2) to make designations. The Commission must take action prior to December 31, 1997 in order to guarantee the continuation of federal support to those carriers that depend upon this support to meet their revenue requirements.¹⁰

There are requests for designation by some carriers that do not depend on federal universal service support to meet their revenue requirements. There is no clear deadline by which the Commission must act on these requests for designation, however, competition is promoted when there are numerous ETCs.

Commission May Make Designations on Its Own Motion

Section 214(e)(2) permits designation of ETCs on the Commission's own motion. One apparent reason for this authority is to enable state commissions to guarantee that at least one company in every area of the state will be responsible for offering basic service to any customer in need of service. Another possible reason for the authority to designate on the Commission's own motion could be promotion of competition.

Rural and Non-Rural Companies Treated Differently

Rural and non-rural companies¹¹ are treated differently in 214(e) with respect to the number of ETCs designated in a given service area and the size of service areas. In the case of an area served by a non-rural telephone company, state commissions *shall*

⁹ 47 C.F.R. 54.201(a)

¹⁰ The independent companies receive substantial amounts of their annual revenue from federal high-cost support.

¹¹ Rural Telephone Company is defined in section 3(37) (47 U.S.C. 153(37)):
The term 'rural telephone company' means a local exchange carrier operating entity to the extent that such entity-

- (A) provides common carrier service to any local exchange carrier study area that does not include either-
- (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or
- (ii) any territory, incorporated or unincorporated, included in a urbanized area, as defined by the Bureau of the Census as of August 10, 1993;
- (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;
- (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or
- (D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

designate more than one ETC. In the case of an area served by a rural telephone company, the commission may designate more than one ETC. In order to make an additional designation in an area served by a rural telephone company, the state commission must find that it is in the public interest to make the second designation.

No standard is given in the Act on which to base a finding of the public interest, however, *In re Electric Lightwave* (ELI) must be considered in determining the public interest in Washington.¹² The court held at page 542:

We affirm the trial court's decision that the Commission is powerless to grant monopolies. Our holding does not prevent the Commission from limiting the number of LEC's or other telecommunications companies which may operate in a given territory. It does however forbid the commission from legally conferring on any LEC the right to be the exclusive provider of telecommunications services in a given exchange.

The entire thrust of the decision is that there are no *de jure* monopolies and that *de facto* monopolies are abhorred and not to be protected.¹³ Put another way, not only is it not in the public interest for the Commission to protect *de facto* monopolies, arguably the case stands for the positive proposition that the commission must take every opportunity to advance competition in the public interest.¹⁴

The language of 214(e) is permissive with respect to granting additional ETC petitions for areas served by rural telephone companies; a state commission "may" grant them if they are in the public interest. The ELI case, however, suggests that in Washington, because elimination of *de facto* monopolies is in the public interest, the Commission may have to approve additional ETCs for rural areas unless there is another reason separate from protection of *de facto* monopolies for finding that it is not in the public interest.

Service Area Designation

Service area designation is guided by 214(e)(5). A service area means a geographic area established by the Commission. The authority to determine the geographic area of service areas for non-rural companies is given to state commissions without limitation. In

¹² *In re Electric Lightwave, Inc.*, 123 Wn.2d 530 (1994).

¹³ "Neither Const. Art. 12, § 19 nor Const. Art. 12, § 22 represents an absolute prohibition against monopolies. They do however manifest the state's abhorrence of monopolies." (citations omitted) *ELI* at 538.

¹⁴ [I]t is the state's policy to "[p]romote diversity in the supply of telecommunications services and products in telecommunications markets *throughout the state*." *ELI* at 539 (Quoting RCW 80.36.300(5)) (emphasis added). The complete text of RCW 80.36.300 is in Tab 6.

the case of an area served by a rural carrier, however, 214(e)(5) defines the service area as the carrier's "study area"¹⁵ unless the Commission and the FCC¹⁶ establish a different definition of service area. In establishing a service area different than the study area, the Commission must "take into account" the recommendations of the Federal-State Joint Board.

The "take into account" language concerning the recommendations of the Federal-State Joint Board is significant because in the policy and recommendations section of this memo staff will suggest taking actions on service area designation which are different than the positions taken by the Joint-Board. There are no decisions interpreting this section; however, I found decisions addressing similar issues. In general, decisions made by agencies which require that the agency interpret statute and examine certain issues are reviewed under the analysis established in the *Overton Park* and *Chevron* line of cases.¹⁷ The interpretation of the statute must be reasonable and great deference is given to agencies. An analysis and determination is not arbitrary or capricious if the agency examines the relevant information and articulates a satisfactory explanation for its action.

The D.C. circuit examined the meaning of "take into account" in Huls America Inc v. Browner, 83 F.3d 445 (D.C. Cir. 1996) (affirming the district court) (Complete case in Tab 8). It is not precisely on point because the statute involved a list of several things to be taken into account and the list contained the disjunctive "or." The main focus was on whether the EPA could base its decision on only one criterion from the list. The Court determined the statute was ambiguous and then under *Chevron* determined the EPA's interpretation that it could focus on only one factor was permissible.¹⁸ The Court then examined the manner in which EPA applied this criterion and conclude that this inquiry for arbitrariness or capriciousness was narrow and that "we review only to ensure that the agency examined the relevant data and articulated a satisfactory explanation for its action and will not substitute our judgment for that of the agency." (Huls at 452) (citation

¹⁵ A "study area" is generally an incumbent LEC's pre-existing service area in a given state. The study area boundaries are fixed as of November 15, 1984. MTS and WATS Market Structure: Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Decision and Order, 50 Fed. Reg. 939 (1985).

¹⁶ The FCC has established a procedure for reviewing state orders which make designations of areas other than the study area as the service area. Its procedure anticipates that initial action will be taken by the states; designations are deemed approved if the FCC does not act within 90 days of noticing the receipt of the state order. See 47 C.F.R. 54.207.

¹⁷ These are federal cases; the first review of the Commission's orders will be by the FCC. Washington cases are referred to in footnotes.

¹⁸ Washington's approach is similar, if not identical. "This deference to an agency's interpretation of a statute will be given only when a statute is ambiguous." ARCO v. Utils. & Transp. Comm'n, 125 Wn.2d 805, 810 (citing Waste Mgt. of Seattle, Inc. v. Utils. & Transp. Comm'n, 123 Wn.2d 621,628). Complete case in Tab 10.

omitted)¹⁹ Applying this standard, the Court determined that while there were several ways to measure the criterion (toxicity of a chemical compound in this case) and that “EPA’s discussion of the evidence...is certainly of less than ideal clarity, its comments are sufficient for us to discern its rationale for denying delisting.” (Huls at 454.)

Attorneys for some companies and an association of providers have suggested that “take into account” essentially means the Commission must *follow* the recommendations of the Joint Board; alternatively, it could be fairly interpreted to mean the commission must consider the recommendations and either follow them in whole or in part, or deviate from them entirely. Following *Chevron* and Huls, the statute is ambiguous and the Commission’s interpretation need only be reasonable and great deference must be given to the agency. If the Commission determines that the reasonable interpretation is that it need not follow the recommendations, it must then examine the relevant material (e.g. the Joint Board recommendations and the FCC Report and Order) and “articulate a satisfactory explanation for its action.” (Huls at 452) (citation omitted).²⁰

Additional State Requirements for ETCs--Service Quality Standards

The language of 214(e) lists only two requirements for ETCs: that they be willing to provide basic service to any customer in a geographic service area and that they advertise the availability of this basic service. The FCC has concluded that states do not have the authority to adopt additional criteria for designation as an ETC.²¹ The FCC reaches this conclusion only by examining 214(e); it does not also examine 254(f). States may, under 254(f), “adopt...additional definitions and standards to preserve and advance universal service.”²² These definitions or standards, however, must not have the effect of setting up

¹⁹ “Both the “substantial evidence” and the “arbitrary and capricious” standards are highly deferential. As we have stated previously, “[w]e will not set aside a discretionary decision absent a clear showing of abuse.” ARCO at 812 (citing Jensen v. Department of Ecology, 102 Wn.2d 109, 113)

²⁰ In ARCO, speaking of a method to determine reasonableness rather than an interpretation, the court states: “It should be pointed out that the evidence need not support the contention that the approved method is the *most* just and reasonable. It may very well be that the method proposed by Respondents, and rejected by the Commission, is just and reasonable. There may in fact be many different methods that would meet the standard. We need only decide, however, whether the record can support the Commission’s determination that the approved method is one of these. ARCO at 814 (emphasis in original). By analogy, the Commission’s interpretation and application of “take into account” need only be one of any number of reasonable interpretations and applications.

²¹ ¶ 135, First Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997).

²² The complete text of 254(f) is in Tab 2. The sentence from which this is excerpted is ambiguous in that it could refer only to collection and disbursement of funds or, as is suggested, it is authority to provide for standards which ETCs must meet in order to be eligible to receive universal service support. The latter is reasonable and under *Chevron* could be determined a permissible construction.

barriers to entry prohibited in 253. Based on this authority, staff recommends inclusion of service quality standards for regulated carriers²³ as well as inclusion in the orders of a scheme of suspension and revocation for ETCs that fall short of their obligations. This will be discussed more fully in the policy section of the memo.

Wireless Carriers Can Be ETCs

The FCC has concluded that a carrier must be able to serve all potential customers in a service area, but may do so with its own facilities or by combining its facilities with those of another carrier. This is important for wireless carriers in particular. The FCC has concluded wireless carriers are eligible to be designated as ETCs provided they have the ability to serve all potential customers in a service area, which they may accomplish through combining their services with land line services of another carrier.²⁴ This approach, permitting wireless carriers (and cable, satellite, electric and gas companies too) to be ETCs, is also technologically neutral.

Technological neutrality is a principle recommended by the Joint Board and adopted by the FCC and applied to all aspects of interpretation and administration of the Telecommunications Act.²⁵ It has been widely, if not universally embraced by states and industry. A complicating factor is that wireless service may not be seen as a substitute for wireline service but instead as a non-basic service that is not part of the universal service objective. It is very difficult to untangle the circumstances where wireless is a different method of providing the same basic services and those where it is providing a different and non-supported service. It also is difficult to determine whether these should be untangled at all.

Inclusion of wireless companies as potential ETCs is also competitively neutral. Wireless companies are required to contribute to universal service support mechanisms. If they must contribute but cannot draw on those funds in the same manner as eligible carriers, they will be at a competitive disadvantage where they serve high-cost customer locations.

Suspension and Revocation

Section 214(e) does not provide for suspension or revocation of ETC status if a carrier fails to act consistent with the obligations of an ETC. The additional authority under

²³ Because of the statute prohibiting regulation of wireless companies, it may not be possible for Washington to require this or anything else of wireless companies.

²⁴ ¶ 141 & ¶ 145, First Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997).

²⁵ ¶ 47, First Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997).

254(f) permitting adoption of additional standards and definitions is very broad and should support suspension and revocation. Staff's recommendation is that all orders contain a paragraph which states that ETC designation may, after notice and an opportunity to be heard, may be either suspended or revoked by the Commission.

Severability

The final orders for these designations may contain some findings, conclusions and ordering clauses which may be contested by some of the designees. Where there is a deviation from the study area designation, there will be a review by the FCC which may agree or disagree with the state's approach. I recommend that each final order contain a severability clause so that if one part of the order is challenged and invalidated (the requirement for meeting service quality standards, for example), the remainder of the order will be in force.

POLICY

Promotion of Competition

Universal service support will be made available to companies serving customers in high-cost locations to preserve those customers' participation on the network and to advance universal service through competition that will eventually result in lower prices. Payments to companies serving high-cost customer locations is necessary to maintain incumbent service in those areas as well as to induce competition from other carriers.

Because only ETCs are eligible for federal²⁶ universal service support, it is important to designate as many carriers as possible to foster competition in high-cost locations. Promotion of competition as a policy principle naturally leads to a policy of designating any qualifying carrier that petitions. It might also lead to situations in which the Commission would act on its own motion to designate a qualifying, but not petitioning, carrier.

Exchange Level Service Areas

Staff recommends designation of ETCs at the exchange level rather than the study area level. The purpose is to promote competitive entry by making it easier for new entrants to get started in relatively small areas and for competing carriers to align their ETC service areas with their own service areas.

²⁶ The draft report to the Legislature on universal service and staff work leading up to ETC designations has assumed that the state universal service mechanisms which will eventually be adopted in Washington will not be substantially different than the federal mechanisms.

A study area is composed of all of a companies exchanges. The USWC study area, for example, is very large, as is that of GTE, Sprint/United and PTI. Because designation requires an ability and willingness to serve all potential customers in a service area, to designate at the study area would require new entrants to take on service expectations for hundreds of square miles of territory and up to two million customers in the case of USWC. It would be unlikely that a new entrant could compete on such a large scale; it would be nearly impossible for a cable operator or a wireless company to have the ability to serve such large areas.

The use of exchange-level boundaries (the smallest geographical units available to us at this time) will also result in more targeted universal service support. Support will go to companies that serve high-cost customer locations in those exchanges which have high average loop costs.²⁷ Support will be available to incumbents and new entrants; the amount of support will be directly proportional to the number of customers served through a carrier's facilities, unbundled network elements, resale, or a combination of the three. Cream-skimming is discouraged by maintaining the requirement to serve all potential customers--incumbents and new entrants alike will have to advertise to high-cost as well as low-cost customers and then serve whoever requests their service. Smaller units of geographic area should be used when it becomes feasible to do so in order to target universal service funds more narrowly and reduce the over-all size of the fund.

Several smaller "independent" companies have objected to the staffs recommendation that rural company study areas not be used and that their service areas, like those of larger companies, should be designated at the exchange level. They refer to the recommendations of the Joint Board and the FCC Universal Service Order for support. (The relevant paragraphs are reprinted in whole in Tabs 4 & 5. The Joint Board concluded that maintaining the larger study areas would reduce cream skimming and is in line with present small-company accounting based on embedded costs. (¶ 172-74). At the same time, the Joint Board recommended that non-rural company service areas be designated at least at the exchange level, and even suggested that the FCC should take action to disregard any state decision to make service area designations which are large in size. (¶ 175-78). When read in their entirety, staff concludes that the reasons suggested for small unit designation of non-rural company service areas are equally persuasive for areas served by rural companies.

The treatment of all companies in a like manner will also prevent the occurrence of anomalous results which would seem to be unfair. The Moses Lake exchange, presently served by USWC, will be open to competition without a new entrant ETC having to take

²⁷ This approach is the one recommended to the Legislature in the Draft USF report.